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ATTORNEYS FOR CONSECO
LIFE INSURANCE COMPANY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

CONSECO LIFE INSURANCE COMPANY,

NO.

Plaintiff,

V.

Wells Fargo Bank, N.A., as Trustee of the Victoria Women's Clinic Association 401(k) Plan; Joyce Hager; Charles Bryce Hager; Kristen Leigh Hager; and, Jeffrey Corbett Hager

COMPLAINT FOR INTERPLEADER

Defendants.

Plaintiff, Conseco Life Insurance Company (“Conseco Life”), alleges and states as follows:

I. PARTIES

1. At all times herein mentioned, Conseco Life has been a corporation organized and existing under the laws of the State of Indiana, with its principal place of business in Carmel, Indiana. Conseco Life is a citizen of the State of Indiana.

2. Defendant Wells Fargo Bank, N.A. as Trustee of the Victoria Women's Clinic Association 401(k) Plan ("Trustee") is a National Banking Association and, under 28 U.S.C § 1348 is a citizen of California, the State in which it is "located". It is located in the State

where it has its principal place of business as designated on the organizational certificate, 1 which is on information and belief, California. For purposes of diversity jurisdiction, the 2 citizenship of the Victoria Women's Clinic Association 401(k) Plan ("Plan") is the citizenship 3 of its Trustee.

4 3. Defendant Joyce Hager ("Joyce") is a resident of Victoria, Texas. Joyce is a 5 citizen of Texas.

6 4. Defendant Charles Boyce Hager (Charles") is a resident of Baton Rouge, 7 Louisiana. Charles is a citizen of Louisiana.

8 5. Defendant Kristen Leigh Hager ("Kristen") is a resident of New York, New 9 York. Kristen is a citizen of New York.

10 6. Defendant Jeffrey Corbett Hager ("Jeffrey") is a resident of Humble, Texas. 11 Jeffrey is a citizen of Texas.

13 **II. JURISDICTION AND VENUE**

14 7. Conseco Life brings this interpleader action pursuant to 28 USC § 1332 and 15 Federal Rules of Civil Procedure 22.

16 8 Conseco Life has custody or possession of money, in controversy, in excess of 17 \$75,000, to wit, disputed life insurance benefits of Mark Wayne Hager Five Hundred 18 Thousand Five Hundred Three Dollars and Fifty Cents (\$500,503.50) (the "Policy Benefits") 19 plus interest as provided by law.

20 9. Defendants are adverse claimants, who are diverse in citizenship to Conseco 21 Life who have each claimed or had claimed on his or her behalf entitlement to the Policy 22 Benefits, payment of which to any may expose Conseco Life to double or multiple liability. 23 This Court therefore has subject matter jurisdiction under 28 USC §1332.

10. Venue is proper in this Court under 28 USC §§1391 and 1397 because at least
1 one of the Defendants resides in this judicial district.

2

3 **III. CLAIM FOR RELIEF**

4 11. On May 22, 2003, the Decedent, Mark Wayne Hager (“Decedent”), and
5 Trustee, on behalf of the Plan, applied with Conseco Life for a life insurance policy in the
6 face amount of \$500,000.00 on the life of Decedent. Such a policy was issued by Conseco
7 Life on or about May 6, 2003 as Policy Number 0703R04320 (the “Policy”). A true and
8 accurate copy of the Policy, including the Application, is attached hereto as Exhibit A.

9 12. In the Application for the Policy, Trustee, for the Plan as Owner, designated
10 “William Herman Hager (father) as Trustee for children Charles Bryce Hager, son, Kristen
11 Leigh Hager daughter, Jeffrey Corbett Hager, son” as beneficiary(ies).

12 13. Decedent died on September 5, 2010 while a resident and citizen of the State
13 of Texas.

14 14. Charles, Kristen and Jeffrey have submitted a written claim, dated December
15 26, 2010, to Conseco Life, seeking payment of the Policy Benefits. A true and accurate copy
16 of such claim is attached hereto as Exhibit B

17 15. The Trustee has corresponded with Conseco Life and has indicated that either
18 the Plan or Joyce is the proper beneficiary of the Policy and that the Policy Proceeds should
19 be paid to the Trustee. True and accurate copies of correspondence from the Trustee asserting
20 such position is attached hereto as Exhibit C.

21 16. Conseco Life cannot determine to whom the disputed Policy Benefits belong,
22 and fears exposure to multiple liability if it delivers the Policy Benefits to any of the
23 Defendants.

17. Conseco Life claims no interest in the Policy Benefits, and wishes to deposit
1 same in Court, and be discharged from any obligation for any of the Policy Benefits, interest
2 thereon, the detention of such, or further liability to any of the Defendants after the date of
3 deposit.

18. Conseco Life stands ready to deposit with the Clerk of this Court the sum of
5 Five Hundred Thousand Five Hundred Three Dollars and Fifty Cents (\$500,503.50), which
6 represents the Policy Benefits, being the face value of the Policy, plus interest, if any, as
7 allowed by applicable law to the date of deposit.

19. Conseco Life has incurred, is incurring, and will continue to incur costs and
9 attorneys fees in bringing this action.

10 WHEREFORE Bankers prays for judgment as follows:

11 1. That Defendants and each of them be ordered to interplead and
12 litigate their claims to the Policy Benefits in this Court, and be enjoined from commencing
13 any other action or proceeding against Conseco Life related to the Policy;

14 2. That Conseco Life be discharged from liability to each of the Defendants with
15 respect to any proceeds of the said Policies or any claim related thereto;

16 3. That Conseco Life be awarded costs and reasonable attorneys fees incurred in
17 this action; and,

18 4. That Conseco Life be awarded all other and further relief as the Court may
19 deem proper.

DATED this 15th day of February, 2011.

Respectfully Submitted,

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